Supreme Court, U. S.
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No. 72-700

In the Supreme Court of the United States

OCTOBER TERM, 1972

HENRY HERNANDEZ, ET AL., PETITIONERS

v.

VETERANS ADMINISTRATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENTS

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The petitioners in this case are conscientious objectors who performed civilian alternative service in lieu of military service. They then sought from the Veterans Administration, but were denied, educational benefits under the Veterans Readjustment Benefits Act. The lower courts held that the bar to judicial review of Veterans Administration decisions in 38 U.S.C. 211(a) covers challenges to the constitutionality of statutes that the Veterans Administration administers, and described petitioners' claim that the denial of educational benefits to persons who performed civilian alternative service is unconstitutional as insubstantial. The petition challenges only the

ruling that Section 211(a) bars judicial consideration of the constitutional claim.

Following the filing of the government's brief in opposition in this case, the United States District Court for the District of Massachusetts in a similar suit, *Robison* v. *Johnson*, No. 72-434-G, held (1) that Section 211(a) does not bar a suit on this claim, and (2) that the statute is unconstitutional. (A copy of that court's opinion is attached to petitioners' reply brief in the present case.) The government is appealing the *Robison* decision directly to this Court under 28 U.S.C. 1252.

In the circumstances, we suggest that the Court should defer acting on the present petition until it considers the jurisdictional statement in *Robison*. If it notes probable jurisdiction of that appeal, we further suggest that it hold the present petition until it decides *Robison* and that it then dispose of it in accordance with that decision. *Robison*, in which the district court held the statute unconstitutional and refused to treat 38 U.S.C. 211(a) as a bar to judicial review of that question, appears the appropriate case for resolving the issues, and there appears to be no occasion for the Court to hear a second case which directly raises only the statutory issue.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1973.

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